

US EPA ARCHIVE DOCUMENT



Pennsylvania Department of Environmental Protection

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January 2, 2009

Office of Waste, Air and Radiation Management

717-772-2724

Mr. Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Mr. Welsh:

On May 31, 2007 the Commonwealth of Pennsylvania submitted to the United States Environmental Protection Agency Region III (EPA), an Authorization Revision Application (Revision Package 3). The Application was submitted by letter signed by Pennsylvania Department of Environmental Protection Secretary Kathleen A. McGinty. The Application sought authorization for several RCRA regulatory revisions that Pennsylvania had incorporated prospectively by reference, and stated that "Because these Federal regulations have been incorporated by reference, the Commonwealth's analogs to them are identical." The Commonwealth's Third Supplemental Legal Statement was also submitted as part of Revision Package 3.

On November 30, 2007, EPA Region III informed PADEP that it had determined that the regulations for which the Commonwealth sought authorization are equivalent to the Federal program. However, EPA noted three significant inconsistencies between the Authorization Revision Application and the Supplemental Legal Statement and advised PADEP to submit a revised Application. EPA subsequently advised PADEP that the revised Application could be signed by a Deputy Secretary.

PADEP agrees that it needed to address the three significant inconsistencies identified by EPA, and is hereby submitting this revised Application.

This letter corrects the three significant inconsistencies referenced above and replaces the original May 31, 2007 Authorization Revision Application. The Commonwealth is seeking authorization under Subtitle C of the Resource Conservation and Recovery Act (RCRA) for several RCRA regulatory revisions that Pennsylvania has prospectively incorporated by reference with minor exceptions. Therefore, we believe that Pennsylvania demonstrates adequate and equivalent authorities to obtain EPA authorization.



Over the past few years, EPA has moved toward reducing administrative requirements in the RCRA authorization process, particularly if a State seeks authorization for minor rules. The Commonwealth's analogs to the RCRA regulatory revisions for which it is seeking authorization are equivalent to the Federal provisions because, as noted above, the Commonwealth has incorporated the Federal provisions by reference prospectively with minor exceptions. These program revisions are not considered major and have little impact on the implementation of those parts of the Federal program for which Pennsylvania is already authorized. Therefore, no revisions are necessary to the existing RCRA Subtitle C Authorization Memorandum of Agreement.

This letter is being submitted as the program description for Pennsylvania's third program revision application, and it describes the scope of additional authority for which the Commonwealth is seeking authorization. It is an addendum to the program description submitted with Pennsylvania's first program revision application, for which the Commonwealth received authorization, effective November 27, 2000.

The Commonwealth seeks authorization for the following regulatory revisions of Subtitle C of RCRA that were published in the *Federal Register* on September 30, 1999; November 19, 1999; July 10, 2000; May 14, 2001; and from June 29, 2001, through October 12, 2005.

A. COMMONWEALTH ANALOGS TO FEDERAL REGULATIONS

Federal Register Citation	Date Promulgated	Description of Regulation
64 <u>FR</u> 52828 64 <u>FR</u> 63209	9/30/99 11/19/99	Hazardous Air Pollutant Standards for Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements; Technical Correction to Fast-track Rule
65 <u>FR</u> 42292 66 <u>FR</u> 24270 66 <u>FR</u> 35087	7/10/00 5/14/01 7/3/01	Hazardous Air Pollutant Standards; Technical Corrections
66 <u>FR</u> 50332 66 <u>FR</u> 60153	10/3/01 12/3/01	Mixture and Derived-From Rules Revision II
66 <u>FR</u> 58258 67 <u>FR</u> 17119	11/20/01 4/9/02	Inorganic Chemical Manufacturing Wastes Identification and Listing
67 <u>FR</u> 2962	1/22/02	CAMU Amendments
67 <u>FR</u> 6792	2/13/02	Hazardous Air Pollutant Standards for Combustors: Interim Standards
67 <u>FR</u> 6968	2/14/02	Hazardous Air Pollutant Standards for Combustors: Corrections
67 <u>FR</u> 11251	3/13/02	Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste
67 <u>FR</u> 48393	7/24/02	Zinc Fertilizer Rule

Federal Register Citation	Date Promulgated	Description of Regulation
67 <u>FR</u> 62618	10/7/02	Treatment Variance for Radioactively Contaminated Batteries
67 <u>FR</u> 77687	12/19/02	Hazardous Air Pollutant Standards for Combustors – Corrections 2
69 <u>FR</u> 21737 69 <u>FR</u> 62217	4/22/04 10/25/04	National Environmental Performance Track Program
69 <u>FR</u> 22602	4/26/04	NESHAPS: Surface Coating of Automobiles and Light-Duty Trucks
70 <u>FR</u> 9138 70 <u>FR</u> 35032	2/24/05 6/16/05	Hazardous Waste - Nonwastewaters From Production of Dyes, Pigments, and Food, Drug, Cosmetic Colorants; Mass Loadings-Based Listings
70 <u>FR</u> 34538 70 <u>FR</u> 44150	6/14/05 8/1/05	Waste Management System; Testing and Monitoring Activities: Methods Innovation Rule and SW-846 Final Update IIIB
70 <u>FR</u> 36850	6/27/05	Project XL Site-Specific Rulemaking for the Ortho-McNeil Pharmaceutical, Inc. Facility in Spring House, PA Involving On-Site Treatment of Mixed Waste
70 <u>FR</u> 57769	10/4/05	Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures
70 <u>FR</u> 59401	10/12/05	National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

Pennsylvania is currently amending its regulations to resemble more closely the Federal standards for used oil and the manifest, mercury-containing equipment, and the standardized permit; therefore, the Commonwealth is not seeking authorization for the following final rules, as well as the Project XL final rule for New York Public Utilities:

- (1) Recycled Used Oil Management Standards, as published on June 30, 2003 (68 FR 44659) [Revision Checklist 203];
- (2) Modification of the Hazardous Waste Manifest System, as published on March 4, 2005 (70 FR 10776) [Revision Checklist 207];
- (3) Project XL Rulemaking Extension for New York State Public Utilities, as published on May 24, 2005 (70 FR 29909);
- (4) Mercury-Containing Equipment, as published on August 5, 2005 (70 FR 45508); and
- (5) Standardized Permit for RCRA Hazardous Waste Management Facilities, as published on September 8, 2005 (70 FR 53419).

B. COMMONWEALTH-INITIATED CHANGES TO THE PREVIOUSLY AUTHORIZED PROGRAM

Pennsylvania is also seeking approval for Commonwealth-initiated amendments to its hazardous waste regulations. Provisions that have changed are listed below and grouped according to the type of change made.

1. **Redesignations and Corrections of Typographical Errors** - The Commonwealth provisions listed below were amended to correct typographical errors or merely re-designated. All of these changes were made without affecting the stringency of the Commonwealth's currently authorized program.

Pennsylvania Citation	Previously Authorized Pennsylvania Citation	Related Federal Analog
261a.3(a)	261a.3	261.3(c)(2)(ii)(C)
261a.5(b)	261a.5(b)	Related to 261.5(f)(3)(iv) and (v) 261.5(g)(3)(iv) and (v)
262a.12(b) intro. - (b)(1)(iv)	262a.12(b) intro. - 262a.12(b)(4)	Related to 262.12
262a.21(a)	262a.21	Related to 262.21
263a.20(a)	263a.20(1)	Related to 263.20(a)
263a.20(b) intro. and (b)(1)	263a.20(2)	No Federal analog in 263.20
265a.13(1) intro	265a.13(1) intro	No Federal analog in 265.13
270a.42(b)	270a.42(b)	Related to 270.42
270a.60(a) intro.	270a.60(a), 1st sentence	Related to 270.60
270a.60(a)(2)	270a.60(a), 3rd sentence	Related to 270.60
270a.60(b)(1) (iv)	270a.60(b)(1)(iv)	No Federal analogs in Part 270
270a.60(b)(5)	270a.60(b)(6)	Related to 270.60
270a.62	270a.62	Related to 270.62
270a.66	270a.66	Related to 270.66
270a.81(b)(5)	270a.81(b)(5)	124.12(a)(4)

2. **Clarification of Ambiguous Requirements** - The Commonwealth has amended the following provisions to address ambiguities identified through the implementation of the regulations. Some of these amendments remove more stringent requirements or leave previously more stringent provisions equivalent to the federal program.

Pennsylvania Citation	Previously Authorized Pennsylvania Citation	Related Federal Analog
260a.10 "Treatment"	IBR at 260a.1	260.10 "Treatment"
262a.50	262a.55 262a.56 262a.57	Related to 262, Subpart E
264a.97(1)	264a.97(1)	Related to 264.98(d)&(e)
264a.173(2) 265a.173(2)	264a.173(2) 265a.173(2)	No Federal analog in 264.173 or 265.173
265a.175 (Reserved)	265a.175	Related to 265.175
270a.42(c)	270a.42(c)	Related to 270.42
270a.60(a)(1)	270a.60(a), 2nd sentence	Related to 270.60
270a.83(a)(4)	270a.83(a)(4)	Related to 124.31
270a.51(a)	270a.51	270.51 not IBR
270a.60(b)(2)(ii) 270a.60(b)(3)(ii) 270a.60(b)(4)(ii) 270a.60(b)(5)(ii)	270a.60(b)(2)(ii) 270a.60(b)(3)(ii) 270a.60(b)(4)(ii) 270a.60(b)(6)(ii)	Related to 270.60

3. **Changes to Manifest Requirements** - The following new and amended provisions address the administration of the Commonwealth's hazardous waste manifest program. These changes are designed to clarify ambiguous requirements, streamline the manifest process, and ensure that the Department receives timely notification when necessary.

Pennsylvania Citation	Previously Authorized Pennsylvania Citation	Related Federal Analog
262a.20 intro.	262a.20 intro.	Related to 262.20
262a.20(1)	262a.20(1)	Related to 262.20(a)
262a.21(b)	New Provision	262.21(b) related
262a.23(a)(1)	262a.23(a)(1)	Related to 262 Appendix
262a.23(a)(2)	262a.23(a)(2)	No Federal analog in 262.23
262a.23(a)(3)	New Provision	Related to 262.23 and 262 Appendix
262a.23(a)(4)	New Provision	Related to 262.23 and 262 Appendix

Pennsylvania Citation	Previously Authorized Pennsylvania Citation	Related Federal Analog
263a.12(3)	New Provision	No Federal analog in 263.12
263a.20(b)(2)	New Provision	No Federal analog in 263.20
263a.20(b)(3)	New Provision	No Federal analog in 263.20
263a.21(2)	263a.21(2)	Related to 263.20(a)
263a.21(3)	New Provision	Related to 263.20(a)
264a.71(1)	264a.71(1)	Related to 264.71(a)
264a.71(3)		
265a.71(3)	New Provision	Related to 264.71, 264.72 and 265.72
264a.71(4)	New Provision	Related to 264.71
265a.71(1)	265a.71(1)	Related to 265.71(a)
265a.71(4)	New Provision	Related to 265.71

4. **New Provisions Added for Clarification** - These new Commonwealth provisions were added to provide clarity on how the hazardous waste program operates or to provide guidance on proper compliance methods.

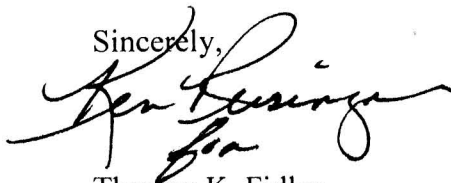
Pennsylvania Citation	Previously Authorized Pennsylvania Citation	Related Federal Analog
261a.3(b)	New Provision	Related to 261.3
262a.11	New Provision	Related to 262.11
262a.12(b)(1)(v)	New Provision	Related to 262.12
262a.34	New Provision	Related to 262.34(a)(1)(i)
262a.43	New Provision	Related to 262.43
270a.51(b)-(d)	New Provisions	270.51 related

5. **Changes to Broader in Scope Requirements** - These are new and amended Commonwealth provisions that are broader in scope than the federal hazardous waste program and are therefore not part of the Commonwealth's authorized program.

Pennsylvania Citation	Related Federal Analog
263a.12(1)&(2)	No Federal analog in 263.12
263a.13	No Federal analog in 40 CFR Part 263
263a.24(b)	No Federal analog in 40 CFR Part 263
263a.26(c)	No Federal analog in 40 CFR Part 263
270a.3	No Federal analog in 270
262a.12(b)(2)	262.12(c) related

The Commonwealth's third Supplemental Legal Statement in support of this application is enclosed. I appreciate your cooperation and support for this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Fidler", written over the word "Sincerely,".

Thomas K. Fidler
Deputy Secretary for
Waste, Air and Radiation Management

Enclosure